UNITED NATIONS

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General Assembly

Distr.
LIMITED

A/AC.105/C.2/L.193/Add.7
7 April 1993
ENGLISH
ORIGINAL: ENGLISH/FRENCH

COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE
Legal Subcommittee
Thirty-second session
New York, 22 March-8 April 1993

DRAFT REPORT OF THE LEGAL SUBCOMMITTEE ON THE WORK OF ITS THIRTY-SECOND SESSION

Addendum

REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 5 (CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES)

1. On 22 March 1993, the Legal Subcommittee re-established its Working Group on agenda item 5.

2. The Working Group had before it a working paper entitled "Principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes", submitted at its current session by the delegations of Argentina, Brazil, Chile, Colombia, Mexico, Nigeria, Pakistan, the Philippines, Uruguay and Venezuela (A/AC.105/C.2/L.182/Rev.1). This working paper is set out in section __ of annex IV to the report of the Subcommittee.

3. In his introductory statement the Chairman referred to the work of the Working Group during its last session in 1992, outlining the extensive exchange of views then undertaken.

4. A statement was made on behalf of the co-sponsors of working paper A/AC.105/C.2/L.182/Rev.1. The Working Group was informed of changes and additions made to working paper A/AC.105/C.2/L.182 taking into account suggestions and comments expressed during the discussions at the Working Group's session in 1992. Some delegations expressed the view that working paper A/AC.105/C.2/L.182/Rev.1 provided a good basis for fruitful discussions and achieving progress by the Working Group.

5. Upon a suggestion by the Chairman, the Working Group agreed to conduct a preliminary exchange of ideas on the provisions of working paper A/AC.105/C.2/L.182/Rev.1, which took the form of a draft General Assembly resolution, with an annex.

6. As a general comment, the view was expressed that, at a later stage, the Working Group should consider the appropriate form of an eventual document to be elaborated on the basis of the working paper in order to decide whether it should be a General Assembly resolution, or any other document.

Preambular paragraphs

7. With regard to the first preambular paragraph, the view was expressed that the words "bearing in mind", in relation with provisions of the Charter of the United Nations, should be replaced with the words "acting in accordance with".

8. The view was expressed that the words "bearing also in mind" in the second preambular paragraph in connection with the 1967 Outer Space Treaty should be replaced with the word "confirming".

9. With regard to the third preambular paragraph, the view was expressed that, for the sake of clarity, the titles of the General Assembly resolutions referred to in that paragraph should be mentioned in addition to their respective numbers. The view was also expressed that the paragraph should refer only to General Assembly resolutions adopted by consensus.

10. The view was expressed that the ideas reflected in the fifth and eighth preambular paragraphs were clearly linked and, therefore, should be harmonized. In reply, the view was expressed that the fifth and the eighth preambular paragraphs, while related, dealt with different subject-matters.

11. Regarding the fifth preambular paragraph, some delegations expressed the view that it combined two different ideas and that it might be interpreted as an attempt to alter the principle enshrined in the first paragraph of article I of the 1967 Outer Space Treaty. In the view of those delegations, the words "taking into particular account the special needs of the developing countries" should be deleted from that paragraph or made the subject of a separate paragraph since they were not contained in the above-mentioned provision of the Treaty. Other delegations expressed the view that the wording of the fifth preambular paragraph correctly reflected the title of item 5 of the Subcommittee's agenda, as agreed upon by consensus, which originated from article I, paragraph 1, of the Treaty, with the addition of the words "taking into particular account the needs of the developing countries". The view was also expressed that the use of the words "particular" and "special" in the same clause both here and elsewhere in the text was tautological and that one word was enough and in accord with precedent.

12. With regard to the eighth preambular paragraph, the view was expressed that the word "facilitate" was too general and that, instead, that preambular paragraph should express an appeal to countries possessing outer space technology and knowledge to cooperate with developing countries.

13. The view was expressed that the ninth preambular paragraph, which stressed the need for maintaining the exploration and utilization of outer space for peaceful purposes, and the tenth preambular paragraph, which conveyed the determination to maintain outer space for peaceful purposes through the promotion of international cooperation in its exploration and utilization, essentially expressed the same idea and could be merged.

14. Regarding the manner for utilization of outer space referred to in the eleventh preambular paragraph, the view was expressed that this provision would seem to extend to the utilization of outer space the criterion of rationality and effectiveness applicable only to the geostationary orbit, as provided for in article 33 of the International Telecommunication Convention. The view was also expressed that the words "rational" and "equitable" required further clarification. The view was expressed that the word "equitable" in the eleventh preambular paragraph should not be mixed up with the word "equality" in the sixth preambular paragraph. Other delegations expressed the view that the word "rational", which had a more practical and technical connotation, was included in that paragraph as a balance to the word "equitable", which had a rather moral connotation. The view was also expressed that several international agreements, General Assembly resolutions and the Statute of the International Court of Justice used the word "equitable" or "equity" and that there was a general understanding of the meanings of these words.

Text set forth in the annex

15. With regard to the text set forth in the annex to the working paper, some delegations expressed the view that its denomination as a set of principles would have to be further considered. In this connection, the view was expressed that the choice of the appropriate title was an important decision and that, while the word "principles" may be eventually acceptable, other options should also be considered, for example, "general approaches", or "guidelines".

16. Some delegations expressed the view that the discussion on the appropriate title for the document set forth in the annex should not impede the consideration of the text itself, which should be analysed in the light of the Subcommittee's role in the progressive development of outer space law. Some delegations expressed the view that any decision on the appropriate title for the document should follow the conclusion of its consideration.

Principle I

17. With regard to paragraph 1, the view was expressed that the word "special" in connection with the needs of developing countries lacked clarity. The view was also expressed that, if it was concluded that developing countries did have special needs, then the word "special" should not be removed from the provision. The view was also expressed that the word "special" had been added in paragraph 1 to make this provision consistent with the fifth and eighth preambular paragraphs, in which the same wording was used. The view was also expressed that developing countries clearly had special needs to achieve economic development, and that the use of the word "special" in the paragraph was appropriate.

18. Regarding paragraph 2, the view was expressed that the word "relevant" in connection with space capabilities was not clear. In response, the view was expressed that this word should be understood as an attempt not to limit the obligation to promote cooperation only to developed countries, but, on the contrary, to extend this general duty also to developing countries when such countries also possessed some "relevant" space capabilities.

19. Some delegations expressed the view that the word "solidarity" was not clear in the context of paragraph 3. In reply, the view was expressed that the word "solidarity" had been included in the working paper to reflect comments made by delegations last year and that the word "solidarity" in that context was intended to underscore the idea that the exploration and utilization of outer space should be conducted in a manner that respects its nature as a province of all mankind.

20. Some delegations expressed the view that the word "sovereignty" was not appropriate in the context of paragraph 3. The view was also expressed that the last clause of that paragraph was not logically connected to the preceding clause, and that the paragraph should be redrafted as follows:

> "When deciding the modalities of their cooperation, States should take into account, particularly in the framework of multilateral cooperation, the solidarity and equity that should prevail in the exploration and utilization of outer space for peaceful purposes, as a province of all mankind."

21. In connection with paragraph 3, the view was also expressed that the meaning of the word "modalities" was not clear, and that paragraph 3 could be interpreted as limiting State sovereignty in determining the modalities of international cooperation. Therefore, it was proposed to replace the words "modalities of their cooperation" with the words "all aspects of their cooperation", or "conduct of their cooperation". In reply, the view was expressed that the provision clearly implied that States had the right to determine the content and specific forms of cooperation, including its manner, conditions and the treatment granted to the recipient country of such cooperation.

Principle II

22. With regard to paragraph 1, some delegations expressed the view that terms and expressions such as "equitable" and "non-discriminatory", which had been used in the more specific context of the 1986 Principles Relating to Remote Sensing of the Earth from Outer Space, should not be used with the same meaning in the paragraph. However, the view was expressed that, while it would be possible to find alternative terms, it would not be advisable to use the same terms and expressions with different meanings in different texts.

23. With regard to paragraph 3, it was asked what the exact meaning was of the expression "as appropriate" as it appeared in that paragraph. In reply, the view was expressed that conditions under which some cooperation programmes operated were not suitable for extension to other cooperation programmes and that the words "as appropriate" were intended to reflect this reality.

24. With regard to paragraph 3, the question was raised whether the intent of this provision was to impose an obligation on, or to make a recommendation to, a State offering cooperation to another State to extend the benefits of the cooperation to other States, or whether such extension would remain subject to the discretion of the State offering cooperation. In reply, the view was expressed that the purpose of the working paper was to help find general guidelines for international cooperation in this field, rather than to impose any compulsory form of cooperation. In the view of that delegation, international cooperation was conducted by sovereign States, and sovereignty was one of the foundations for such cooperation. However, given the different levels of development of States, it was important to identify the forms for a more effective, useful and beneficial cooperation. In the view of that delegation, paragraphs 3 and 4 intended to address this need without affecting State sovereignty, which was expressly referred to in principle I, paragraph 3. Some delegations expressed the view that the words "as appropriate" in paragraph 3 limited any generalized extension of cooperation programmes, so that no inconsistency with principle I, paragraph 3, would arise.

25. Regarding the treatment to be granted to developing countries under paragraph 4, the view was expressed that the notion of "treatment" should be further clarified. In particular, it was asked whether States should set a different form of cooperation according to the stage of development of the recipient country. The view was expressed that the wording of paragraph 4 had been revised so as to avoid the impression of implying any automaticity or standardization of the cooperation. The view was expressed that the special treatment to be accorded to developing countries by countries extending cooperation, as envisaged by principle II, paragraph 3, consisted in providing developing countries with the necessary means in order to fully enable their participation in cooperation programmes. The view was expressed that the notion of special treatment related to other principles, such as the 1986 Principles Relating to Remote Sensing of the Earth from Outer Space, and was intended to reaffirm the desirable way of cooperation in outer space matters.

26. Some delegations expressed the view that paragraph 4, which touched upon substantial aspects of the cooperation, stood in contradiction with principle I, paragraph 3, which provided for States' sovereignty in conducting cooperation. The view was also expressed that the word "should" in paragraph 4, as well as in the preceding paragraph 3, would seem to impose an obligation upon the State offering cooperation. In response, the view was expressed that paragraph 4 should be read in conjunction with paragraph 3, and that the words "as appropriate" in the latter provision envisaged the necessary flexibility.

27. With regard to the special treatment to be accorded to developing countries under paragraph 4, the view was expressed that it might not be advisable to provide for a special treatment only on the basis of the economic development of the countries, since some developed countries did not have particular kinds of space capabilities, while some developing countries did possess certain space capabilities.

28. The view was also expressed that international cooperation on mutually beneficial terms should form the basis in this context. The essence of this legal cooperation is equity. Equity here should focus on according favourable treatment of the developing countries within the overall framework of equal and

non-discriminatory access to outer space. It might seem self-contradictory to a non-legal mind when we speak of equal access to all States with preferential treatment to developing countries. But this is not contradictory in law, and in fact this is the crux of due process or favourable reservations found in most of the legal systems and constitutions of our States.

Principle III

29. With regard to paragraph 1, the view was expressed that there were other relevant objectives that should be referred to, such as the non-duplication of efforts, the efficient allocation of resources and the coordination of policies. However, the view was expressed that it would not be possible to consider all the objectives that might be pursued by international cooperation. In the view of that delegation, in order for the developing countries to benefit from space technology and space activities (for instance, with regard to economic management, weather forecast, mitigation of natural disasters), those countries should have access to space technology. In this connection, without precluding any other objectives that might have appeared important, the mention of the development of indigenous capabilities as the main objective of international cooperation in paragraph 1 seemed to take into account a particular need of the developing countries.

30. Some delegations questioned whether the reference to the development of indigenous capabilities of all States as the main objective of international cooperation meant that international cooperation should be conducted to allow all States to achieve the same stage of development in space matters. In the view of other delegations, the development of national capabilities in all fields of science and technology was a generally accepted goal. In this regard, the purpose of paragraph 1 was not to enable all countries to have full space programmes or to achieve equality in all aspects of space activities, but rather to enable developing countries to be in a position to develop space capabilities and fully participate in international cooperation. The view was also expressed that the scope of international cooperation as envisaged by principle III, paragraph 1, was to allow those countries lacking ability or resources for developing indigenous capabilities to realize that goal, without imposing any binding obligation upon developed countries. In this regard, the development of indigenous capabilities was in accordance with the general framework within which the Working Group had its mandate, namely to consider aspects related to the exploration and utilization of outer space for the benefit and in the interest of all States, taking into particular account the needs of the developing countries.

31. In connection with the question of the development of indigenous capabilities, the view was expressed that this matter should not be considered from a narrow perspective. In the view of that delegation, some States had been able to further develop their capabilities by international cooperation at the bilateral or multilateral level, rather than through exclusive national programmes. However, the view was expressed that the conditions of international cooperation might vary according to the level of development and that a minimum level of indigenous capability must be achieved in order for a country to benefit from such cooperation.

32. Some delegations expressed the view that, in outer space matters, developing countries might have different needs according to their stage of development. In this regard, some developing countries might need to improve their capacity to absorb technology of other countries; other developing countries might need to develop their scientific knowledge and some developing countries might need to enhance their indigenous capability. According to those delegations, paragraph 1, in its current wording, did not address all of the broad range of needs that the developing countries might have. In the view of some delegations, this problem could be solved by adding the words "to make cooperation more viable in all its aspects" at the end of the paragraph.

33. With regard to the promotion and facilitation of the exchange of expertise and technology under paragraph 2, the view was expressed that, in order to enable developing countries without space capabilities to have access to the benefits of space science and technology, the following sentence should be added to paragraph 2, or be set forth as a separate paragraph:

> "The trade barriers obstructing such exchange or affecting the transfer of the technology necessary for the development of indigenous capabilities should be gradually removed, in particular with regard to the developing countries."

34. The view was also expressed that the objectives of international cooperation should be viewed from the vantage point of the needs and interests of the developing countries as a whole. The main objective of the developing countries is to participate in outer space activities. However, should any developing country choose any other method, it may be encouraged to do so. In any case, transfer of technology including material, equipment and scientific know-how, necessary training of personnel, and availability of funds and required capital are the basic requirements. Any legal arrangements of cooperation should be positively oriented and should not be aimed at hindering the transfer of technology. In fact, such a cooperation should be so developed as to facilitate removal of such barriers, if any, in existence.

Principle VI

35. With regard to paragraph 3, the view was expressed that the provision should also take into account the uses of outer space technologies and applications for educational purposes. In this connection, it was suggested to add a new subparagraph, immediately after subparagraph (e), to read as follows:

> "Applications of space technologies for implementing educational programmes to eliminate illiteracy, enhance educational levels and set up training centres for teachers and technicians, particularly in the rural and remote areas of developing countries;"

36. As a general comment, the view was expressed that working paper A/AC.105/C.2/L.182/Rev.1 addressed essentially two different aspects of international cooperation in outer space matters: the terms under which and the manner in which cooperation was established and the way in which cooperation should be conducted. In the view of that delegation, future revision of the working paper should focus on the second aspect, and for that purpose

consideration should be given to the possible elaboration of model contracts covering various aspects of international cooperation.

37. With regard to the future consideration of the next revision of working paper A/AC.105/C.2/L.182, the view was expressed that particular attention should be given to two specific provisions of the paper, namely, principle I, paragraph 3, which dealt with the sovereign right of States to determine and conduct their multilateral cooperation policy, and principle III, paragraph 1, which dealt with the objectives to be pursued by such cooperation. In view of the current economic and social constraints, which in the developed countries themselves heavily influenced governmental action in the field of international cooperation, care must be taken to determine the precise implications of the provisions submitted to the Subcommittee for consideration, so that each party involved could make its decision with full knowledge of the facts, and so that the international climate, which continued to be conducive to cooperation, would not deteriorate.

38. On behalf of the co-sponsors, the view was expressed that the working paper represented a significant effort to incorporate suggestions made by other delegations during the discussions at the previous session of the Working Group on working paper A/AC.105/C.2/L.182 in 1992, as well as to clarify doubts and accommodate hesitations then expressed. It was further stated that the co-sponsors would submit a new revision of the working paper in the future, addressing issues raised and incorporating suggestions made during the current session of the Working Group.

39. Some delegations expressed the view that the overall discussion of working paper A/AC.105/C.2/L.182/Rev.1 had been constructive and positive, and that the suggestions made during the session would be taken into account in future discussions of the paper.

40. In summing up the discussion, the Chairman of the Working Group expressed the view that the debate on the basis of working paper A/AC.105/C.2/L.182/Rev.1 had been very interesting, useful and constructive.

41. The Working Group held its final meeting on 7 April, when it considered and approved the present report.